

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff/Respondent,

v.

ORDER
Crim. No. 03-285(2)
Civil No. 06-2706

Rito Gaxiola,

Defendant/Petitioner.

Petitioner is pro se.

Andrew R. Winter, Assistant United States Attorney for and on behalf of the United States.

This matter is before the Court upon Petitioner's Motion to Alter or Amend Judgment pursuant to Federal Rules of Civil Procedure 59(e).

Background

Petitioner plead guilty to the charge of Conspiracy to Possess with the Intent to Distribute a mixture and substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(A) and 846. He was sentenced to a term of imprisonment of 120 months on November 29, 2004. He did not appeal his conviction and/or sentence, and as a result, this conviction was final on December 9, 2004. Petitioner filed a Petition for Habeas

Relief pursuant to § 2255 on June 28, 2006. The Petition was dismissed as untimely in an Order dated November 6, 2006. [Doc. No. 94].

Petitioner now moves the Court to alter or amend the Court's Order dated November 6, 2006 on the basis that he diligently sought Spanish legal materials in order to timely file his § 2255 Petition, but that his requests went unanswered.

In support, Petitioner has submitted copies of requests for Spanish legal materials. The Court notes that these requests began in January 2006 - after the one year period in which to file his § 2255 petition. The Government further points out that Petitioner waived his right to bring a § 2255 petition in his Plea Agreement. [Doc. No. 70, ¶ 16].

Petitioner has failed to demonstrate that extraordinary circumstances prevented him from filing a timely petition under § 2255. Accordingly,

IT IS HEREBY ORDERED that the Motion to Amend or Alter Judgment [Doc. No. 96] is DENIED.

Date: January 3, 2007

s / Michael J. Davis
Michael J. Davis
United States District Court